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10/743,667	12/22/2003	John Collier	ETH-5115	7614
25570	7590	08/04/2008	EXAMINER	
ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C. Intellectual Property Department P.O. Box 10064 MCLEAN, VA 22102-8064			RYCKMAN, MELISSA K	
ART UNIT	PAPER NUMBER			
3773				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lgallagher@rmsclaw.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/743,667	<b>Applicant(s)</b> COLLIER ET AL.
	<b>Examiner</b> MELISSA RYCKMAN	<b>Art Unit</b> 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 June 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,4 and 7-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,4,7-14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to claims filed 8/27/07.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

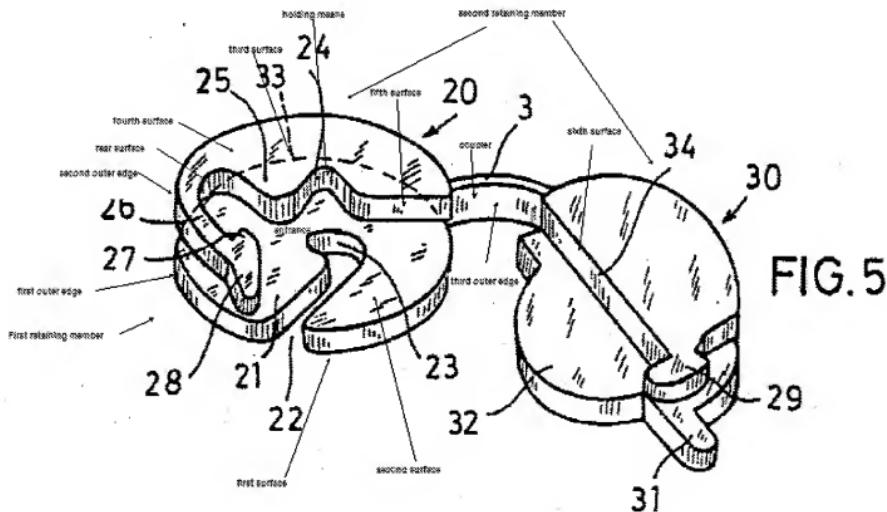
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 7, 11, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuchs et al. (US 4291698).

Regarding Claim 1, Fuchs teaches a suture anchoring device comprising: a first retaining member (21) having a first surface, a second surface and a first outer edge; where the second surface lies in a first plane; the first retaining member having an opening that extends from the first outer edge to an inner point of the first retaining member; a second retaining member having a third surface, a fourth surface, a fifth surface, a sixth surface and a second outer edge; where the third surface lies in a second plane, and the fifth surface and the sixth surface lie nominally perpendicular to the second outer edge at their lines of intersection therewith; a holding means positioned within the second retaining member, the holding means comprised of an opening extending from the fifth or the sixth surface to within the second retaining member; and a coupler having a third outer edge and a cross-sectional area taken in a plane parallel to the first plane that is smaller than the cross-sectional area of the first

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retaining member taken in a plane parallel to the first plane; where the coupler is positioned axially (the coupler is on an axis, the claim does not state the location of the axis or state the coupler is positioned on a central longitudinal axis of the first and second retaining members) between and joins the first retaining member to the second retaining member at the second surface and the third surface; wherein the second and third surfaces are parallel to each other and non-coterminous (see fig. 5 below).



Alternatively, with respect to figures 1-3 regarding Claim 1, Fuchs teaches a suture anchoring device comprising: a first retaining member (4) having a first surface, a second surface and a first outer edge; where the second surface lies in a first plane; the first retaining member having an opening (7) that extends from the first outer edge to an inner point of the first retaining member; a second retaining member (1) having a third

surface, a fourth surface, a fifth surface, a sixth surface and a second outer edge (11); where the third surface lies in a second plane, and the fifth surface and the sixth surface lie nominally perpendicular to the second outer edge at their lines of intersection therewith; a holding means (defined by portions 8 and 9) positioned within the second retaining member, the holding means comprised of an opening extending from the fifth or the sixth surface to within the second retaining member; and a coupler having (fig. 3) a third outer edge and a cross-sectional area taken in a plane parallel to the first plane that is smaller than the cross-sectional area of the first retaining member taken in a plane parallel to the first plane; where the coupler joins the first retaining member to the second retaining member at the second surface and the third surface (fig. 3); wherein the second and third surfaces are parallel to each other and non-coterminous (fig. 2), and the opening on the first retaining member extends from the first outer edge to the third outer edge of the coupler (the examiner interprets extends from as the direction of the path of the opening extends in the direction of the third outer edge, the claim does not state the opening contacts the first outer edge and the third outer edge).

Regarding Claim 4, Fuchs teaches the suture anchoring device of claim 1, where the opening (22) on the first retaining member extends from the second surface to the first surface (fig. 5).

Regarding claim 7, Fuchs teaches the suture anchoring device of claim 1, where the holding means opening further comprises an entrance and a rear surface and the width of the entrance is less than the width of the rear surface (fig. 5).

Regarding Claim 10, Fuchs (fig. 2) teaches the device of claim 2, wherein the cross sectional area of the first retaining member (4) is larger than the cross sectional area of the second retaining member (1).

Regarding Claim 11, Fuchs teaches the suture anchoring device of claim 1, wherein the cross-sectional area of the first retaining member (21) taken in a plane parallel to the first plane is smaller than the cross sectional area of the second retaining member (20,30) taken in a parallel plane (fig. 4).

Regarding Claim 12, Fuchs teaches the suture anchoring device of claim 1, where the cross-sectional area of the first retaining member taken in a plane parallel to the first plane is substantially the same as the cross-sectional area of the second retaining member taken in a parallel plane (fig. 5).

Regarding Claim 13, Fuchs teaches he suture anchoring device of claim 1 where surfaces and corners are rounded (Fig. 5).

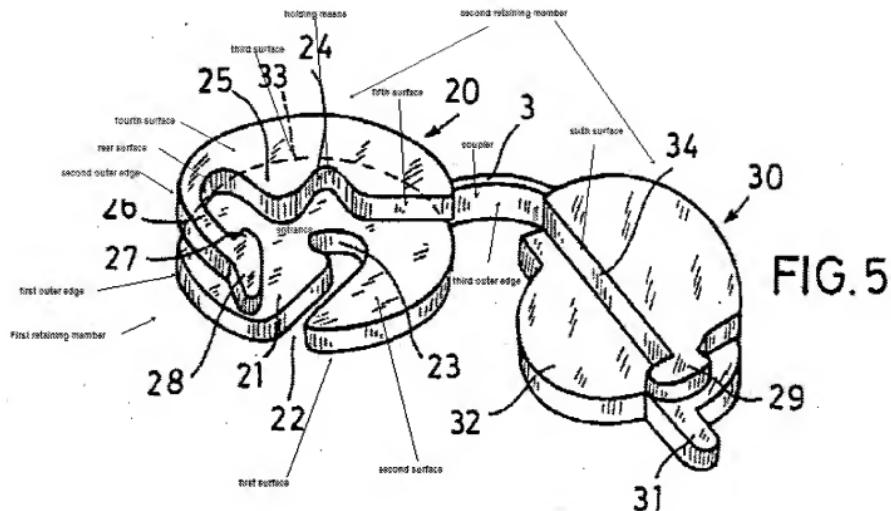
#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8,9 and 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over et al. (US 4291698), and further in view of Kammerer et al. (U.S. Patent No. 6,152,935).

Regarding Claims 15 and 22, Fuchs teaches a suture anchoring device comprising: a first retaining member (21) having a first surface, a second surface and a first outer edge; where the second surface lies in a first plane; the first retaining member having an opening that extends from the first outer edge to an inner point of the first retaining member; a second retaining member having a third surface, a fourth surface, a fifth surface, a sixth surface, and a second outer edge; where the third surface lies in a second plane, and the fifth surface and the sixth surface lie nominally perpendicular to the second outer edge at their lines of intersection therewith; a holding means positioned within the second retaining member, the holding means comprised of an opening extending from the fifth or the sixth surface to within the second retaining member; and a coupler having a third outer edge and a cross-sectional area taken in a plane parallel to the first plane that is smaller than the cross-sectional area of the first retaining member taken in a plane parallel to the first plane; where the coupler is positioned axially (the coupler is on an axis, the claim does not state the location of the axis or state the coupler is positioned on a central longitudinal axis of the first and second retaining members) between joins the first retaining member to the second retaining member at the second surface and the third surface; wherein the second and third surfaces are parallel to each other and non-coterminous (see fig. 5 below).



Alternatively, with respect to figures 1-3 regarding Claim 1, Fuchs teaches a suture anchoring device comprising: a first retaining member (4) having a first surface, a second surface and a first outer edge; where the second surface lies in a first plane; the first retaining member having an opening (7) that extends from the first outer edge to an inner point of the first retaining member; a second retaining member (1) having a third surface, a fourth surface, a fifth surface, a sixth surface and a second outer edge (11); where the third surface lies in a second plane, and the fifth surface and the sixth surface lie nominally perpendicular to the second outer edge at their lines of intersection therewith; a holding means (defined by portions 8 and 9) positioned within the second retaining member, the holding means comprised of an opening extending from the fifth or the sixth surface to within the second retaining member; and a coupler having (fig. 3)

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a third outer edge and a cross-sectional area taken in a plane parallel to the first plane that is smaller than the cross-sectional area of the first retaining member taken in a plane parallel to the first plane; where the coupler joins the first retaining member to the second retaining member at the second surface and the third surface (fig. 3); wherein the second and third surfaces are parallel to each other and non-coterminous (fig. 2). Fuchs does not specify the coupler being a cylindrical or helical member, however Kammerer teaches a helical member (12). It would have been obvious to one of ordinary skill in the art to have the coupler be a helical member (the helical member is considered a cylindrical member) as the helical member provides flexibility allowing better placement of the device.

Claims 16 and 23:

Fuchs teaches and the opening on the first retaining member extends from the first outer edge to the third outer edge of the coupler (the examiner interprets extends from as the direction of the path of the opening extends in the direction of the third outer edge, the claim does not state the opening contacts the first outer edge and the third outer edge).

Claims 17 and 24:

Fuchs teaches the opening on the first retaining member extends from the second surface to the first surface (this is shown in the figure above, the opening extends in the upward direction from the retaining means).

Regarding Claims 18 and 26, Fuchs (fig. 2) teaches the device of claim 2, wherein the cross sectional area of the first retaining member (4) is larger than the cross sectional area of the second retaining member (1).

Regarding Claim 19, Fuchs teaches the suture anchoring device of claim 1, wherein the cross-sectional area of the first retaining member (21) taken in a plane parallel to the first plane is smaller than the cross sectional area of the second retaining member (20,30) taken in a parallel plane (fig. 4).

Regarding Claim 20, Fuchs teaches the suture anchoring device of claim 1, where the cross-sectional area of the first retaining member taken in a plane parallel to the first plane is substantially the same as the cross-sectional area of the second retaining member taken in a parallel plane (fig. 5).

Regarding Claim 21, Fuchs teaches he suture anchoring device of claim 1 where surfaces and corners are rounded (Fig. 5).

Regarding Claim 25, Fuchs teaches the suture anchoring device of claim 1, where the holding means opening further comprises an entrance and a rear surface and the width of the entrance is less than the width of the rear surface (fig. 5).

#### ***Response to Arguments***

Applicant's arguments filed 6/13/08 have been fully considered but they are not persuasive. The applicant generally argues:

- Fuchs does not have a coupler positioned axially between and joins the first and second retaining members

- Kammerer teaches a tension spring, this device would be biased against closing.

The examiners position is the applicant does not clearly define the axis and location of the coupler, Fuchs teaches the coupler as currently claimed in the independent claims. The current claims teach a helical member, Kammerer teaches the structure of the current claimed invention.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is

(571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR  
/Melissa Ryckman/  
Examiner, Art Unit 3773

/Darwin P. Erezo/  
Primary Examiner, Art Unit 3773